

CITY OF FAIRFIELD

RESOLUTION NO. 2010 - 104

**RESOLUTION APPROVING A CONSULTANT SERVICES AGREEMENT BETWEEN  
THE CITY OF FAIRFIELD AND MWH AMERICA, INC., FOR WATERMAN WATER  
TREATMENT PLANT MITIGATION MONITORING AND ON-CALL ENGINEERING  
SERVICES**

**WHEREAS**, the Waterman Water Treatment Plant Expansion and Modernization Project resulted in a requirement for long-term biological monitoring of habitat created to mitigate for project impacts; and

**WHEREAS**, staff would like the ability to request limited technical services from MWH America, Inc., the Waterman Water Treatment Plant's design engineer, for various technical studies, advice, and/or small projects.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF FAIRFIELD HEREBY  
RESOLVES:**

**Section 1.** The City Manager is hereby authorized and directed to execute on behalf of the City of Fairfield, an Agreement between the City of Fairfield and MWH America, Inc., for Waterman Water Treatment Plant Mitigation Monitoring and On-Call Engineering Services for a total not-to-exceed fee of \$220,000 through the end of 2014.

**Section 2.** The City Manager is hereby authorized to implement the above-mentioned agreement.

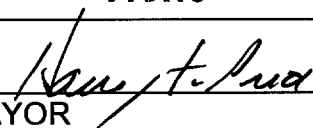
**PASSED AND ADOPTED** this 7th day of June 2011, by the following vote:

AYES: COUNCILMEMBERS: Price/Timm/Moy/Mraz/Vaccaro

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

  
MAYOR

ATTEST:

  
CITY CLERK  
pw

## AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT, made and entered into this 7 day of June 2011,  
by and between the CITY OF FAIRFIELD, a municipal corporation, hereinafter referred  
to as "CITY" and MWH AMERICAS, INC., hereinafter referred to as "ENGINEER."

### WITNESSETH:

WHEREAS, CITY desires to contract for certain professional engineering services  
necessary for monitoring of biological habitat established at the Waterman Water  
Treatment Plant to mitigate for fill placed in wetlands during the Expansion and  
Modernization Project at the plant and for on-call troubleshooting and plant optimization  
advice, which for the purposes of this Agreement shall be called "PROJECT," and,  
WHEREAS, ENGINEER is willing and qualified to do said professional engineering  
services;

NOW, THEREFORE, in consideration of the mutual promises, covenants and  
agreements herein set forth, the parties do hereby agree as follows:

#### I. DUTIES OF ENGINEER

The ENGINEER shall provide professional engineering services required for  
design and construction of the PROJECT as described in **Exhibit "B"**, Scope  
of Work.

#### II. DUTIES OF CITY

The CITY shall:

- A. Make available previous plans, reports, and all other data relative to the  
design of the PROJECT and full information as to the CITY's  
requirements, including title reports and condemnation guarantees as  
required.
- B. Review preliminary and final plans, specifications, estimates, and other  
documents presented by ENGINEER and render decisions within a

reasonable time, and give prompt notice to ENGINEER at any time CITY observes or otherwise becomes aware of any error, omission, or defect in the PROJECT.

- C. Participate in the presentations and workshops described in the Duties of Engineer.
- D. Make all necessary provisions for ENGINEER to enter upon public and private property as required in the performance of the services under this Agreement.

### III. MISCELLANEOUS PROVISIONS

- A. ENGINEER shall not assign any rights or duties under this Agreement to a third party without the prior written consent of CITY. In the performance of these services, ENGINEER may utilize personnel and resources from its parent, subsidiary and/or affiliated companies.
- B. It is understood by and between the parties hereto that ENGINEER, in the performance of this Agreement, shall act as, and be, an independent contractor and not an agent or employee of CITY. CITY shall have the right to control ENGINEER only insofar as the results of ENGINEER's services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which ENGINEER accomplishes services rendered pursuant to this Agreement.
- C. ENGINEER represents and warrants to CITY that ENGINEER has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for ENGINEER to practice ENGINEER'S profession. ENGINEER represents and warrants to CITY that ENGINEER shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for ENGINEER to practice his profession.
- D. Except as CITY may specify in writing, ENGINEER shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. ENGINEER shall have no authority, express

or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.

- E. ENGINEER shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by ENGINEER to perform services pursuant to this Agreement, ENGINEER shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons. CITY will work the ENGINEER to facilitate a smooth transition should the CITY require the removal of a person.
- F. ENGINEER shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which ENGINEER is engaged in the geographical area in which ENGINEER practices his profession. All products of whatsoever nature which ENGINEER delivers to CITY pursuant to this Agreement shall be prepared in a substantial, first-class, and workmanlike manner, and conform to the standards of quality normally observed by a person practicing in ENGINEER's profession.
- G. ENGINEER is not a "public official" for purposes of Government Code §§ 87200 et seq. ENGINEER conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, ENGINEER possesses no authority with respect to any CITY decision beyond the rendition of information, advice, recommendation or counsel.
- H. When CITY executes an agreement for or makes payment to ENGINEER in the amount of \$600 (six hundred dollars) or more in any one calendar year. ENGINEER shall provide the following information

to CITY to comply with Employment Development Department (EDD) reporting requirements:

- (A) Whether ENGINEER is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation, non-profit corporation or other form of organization.
  - (B) If ENGINEER is doing business as a sole proprietorship, ENGINEER shall provide the full name, address and social security number or federal tax identification number of the sole proprietor.
  - (C) If ENGINEER is doing business as other than a sole proprietorship, ENGINEER shall provide ENGINEER's federal tax identification number.
- I. The parties hereto agree to immediately and diligently proceed with their respective duties as set forth herein to the end that the PROJECT will be completed properly within the shortest reasonable time.
  - J. The ENGINEER is not responsible for delay, nor shall ENGINEER be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, or acts of God: or the failure of CITY to furnish timely information or to approve or disapprove ENGINEER's work promptly; or delay or faulty performance by CITY, other contractors, or governmental agencies; or any other delays beyond ENGINEER's reasonable control.

#### IV. COMPENSATION OF ENGINEER

- A. Basis of Compensation. For and in consideration of the professional services to be provided by ENGINEER hereunder, CITY agrees to pay ENGINEER, and ENGINEER agrees to accept from CITY as full compensation for said services payment per the rates set forth in the attached **Exhibit "A"**. Compensation to ENGINEER shall not exceed \$220,000 (two hundred twenty thousand dollars) without prior written authorization from the CITY.

B. Extra Work and Change Order Fee. Extra Work performed by the ENGINEER for any work required by the CITY which is not specified in Section I, including but not limited to, any changes to or re-performance of the ENGINEER's work including contract change orders after the award of the construction contract by the City Council, testimony in Court, shall be compensated by the use of the time and material fee rates of the attached Exhibit "A." No extra work will be compensated for unless required by CITY in writing.

C. Schedule of Payments.

1. ENGINEER shall submit, and CITY shall pay, monthly invoices for work performed during the previous month. Billing shall be based on the current hourly and fee rate changes set forth in Exhibit "A" attached hereto and incorporated herein.
2. In the event PROJECT is terminated, CITY shall pay to ENGINEER full compensation for work performed to date of written notification to cease work on the PROJECT.

V. TIME OF COMPLETION

The Work will be completed within the schedule set forth in Exhibit B.

VI. PROJECT MANAGER

ENGINEER designates Glen Grant as Project Manager, to remain such unless or until ENGINEER requests to change said designation and said request is approved by CITY. Major duties shall include:

- A. Personally direct all work essential to the PROJECT.
- B. Sign all letters and instruments as requested by, and on behalf of, CITY.
- C. Attend public meetings related to the PROJECT.

VII. CANCELLATION OF AGREEMENT

This Agreement may be canceled at any time by CITY for its convenience upon written notification to ENGINEER. ENGINEER shall be entitled to receive full

compensation payment for all services performed and all costs incurred to the date of receipt of written notice to cease work on the PROJECT. Said compensation will be determined in accordance with Section IV. ENGINEER shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work on the PROJECT.

VIII. INDEMNIFY AND HOLD HARMLESS

ENGINEER shall indemnify, hold harmless the CITY, its officers, agents and employees from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the negligence, recklessness or willful misconduct of ENGINEER or any person directly or indirectly employed by or acting as agent for ENGINEER in the performance of this Agreement. It is understood that the duty of ENGINEER to indemnify and hold harmless includes the duty to defend.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve ENGINEER from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

IX. INSURANCE

During the term of this Agreement ENGINEER shall obtain and maintain in full force and effect at his/her own cost and expense the following insurance coverage:

- A. Worker's Compensation Insurance. Worker's Compensation Insurance, as required by the State of California, shall be provided that is necessary in connection with the performance of this Agreement. Such insurance shall relieve CITY from all responsibility for such benefits. Said policy shall also include employer's liability coverage no less than one million dollars (\$1,000,000.00) per accident for bodily injury and disease.

- B. General Liability Insurance. ENGINEER shall obtain at its sole cost and keep in full force and effect during the term of this agreement commercial general liability insurance in the amount of one million dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury, and property damage. Said insurance shall provide (1) that the CITY, its officers, agents, employees, and volunteers shall be named as additional insureds under the policy, and (2) that the policy shall operate as primary insurance, and that (3) no other insurance effected by the CITY or other named insureds will be called upon to cover a loss covered thereunder.
- C. Automobile Liability Insurance.  
ENGINEER shall obtain at its sole cost and keep in full force and effect during the term of this agreement automobile liability insurance in the amount of one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage. Said insurance shall provide (1) that the CITY, its officers, agents, employees, and volunteers shall be named as additional insureds under the policy, and (2) that the policy shall operate as primary insurance, and that (3) no other insurance effected by the CITY or other named insureds will be called upon to cover a loss covered thereunder.
- D. Certificates of Insurance.  
ENGINEER shall file with the CITY's Director of Public Works upon the execution of this agreement, certificates of insurance which shall provide that no cancellation, major change in coverage, expiration, or renewal will be made during the term of this agreement, without thirty (30) days written notice to the Director of Public Works prior to the effective date of such cancellation, or change in coverage.  
ENGINEER shall file with Director of Public Works concurrent with the execution of this agreement, the CITY's standard endorsement form (attached hereto) providing for each of the above requirements.
- E. Professional Liability Insurance. During the term of this agreement, ENGINEER shall maintain a professional liability insurance policy covering any loss arising out of the negligent acts, errors, or omissions of



ENGINEER in the amount of not less than one million dollars (\$1,000,000.00).

- F. Additional Insured. CITY shall add "ENGINEER as additional insured" in the agreement [front end] between the Construction Contractor and the CITY for any construction work related to these services.

X. OWNERSHIP OF DOCUMENTS

All documents prepared by ENGINEER in the performance of his duties under this Agreement, including but not limited to, the plans, reproducible mylar plans, specifications, and contract documents shall be the property of the City of Fairfield. If this Agreement is canceled in accordance with Section VII of this Agreement all completed and partially completed documents prepared by ENGINEER shall be delivered to the CITY within two weeks of notice of cancellation. Any modification of the Work Product or reuse of the Work Product for other than the specific purpose intended without written verification or adaptation by ENGINEER will be at CITY's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's subcontractors and subconsultants.

XI. SCOPE OF AGREEMENT

This writing constitutes the entire Agreement between the parties relative to professional engineering services on the PROJECT and no modification hereof shall be effective unless or until such modification is evidenced by a writing signed by both parties to this Agreement.

XII. PROHIBITED INTERESTS

No employee of the City of Fairfield shall have any direct financial interest in this Agreement. This Agreement shall be voidable at the option of the CITY if this provision is violated.

XIII. LOCAL EMPLOYMENT POLICY

The City of Fairfield desires wherever possible to hire qualified local residents to work on City projects. Local resident is defined as a person who resides in Solano County.

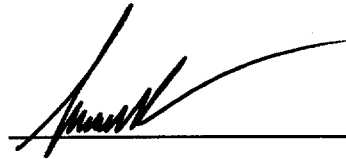
The City encourages an active affirmative action program on the part of its contractors, consultants, and developers.

When local projects require, subcontractors, contractors, consultants, and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractors, consultants, and developers will be asked to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, City of residence, and ethnic origin.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day of June 7, 2011.

CITY OF FAIRFIELD  
a municipal corporation (CITY)

  
\_\_\_\_\_ 6/21/11

By Janet Atkinson  
(ENGINEER)

## **EXHIBIT "A"**

### **Charge Rate Schedule**

#### **1      COMPENSATION**

Compensation CITY shall pay to ENGINEER shall be based on actual labor and expenses attributable to the Project. Compensation for labor shall be equal to Direct Job Wage times 3.105. Compensation for non-salary expenses and outside services shall be equal to the actual cost of those non-salary expenses and outside services plus an expense markup.

Non-salary expenses and outside services attributable to the Project shall include:

- Living and traveling expenses of employees when away from their home office on business connected with the Services;
- An associated project cost ("APC") rate for telecommunications, postage, computers, word processors, incidental photocopying, and related equipment in the amount of \$9.50 per labor hour;
- The identifiable costs of reproduction, printing and binding applicable to the Project;
- A CAD rate in the amount of \$16.75 per computer aided design/drafting hour to cover the hardware, software and related expenses of CAD; and
- The actual cost of outside and subcontracted services identifiable to the Project.

Non-salary expenses and outside services will be charged at the above stated cost plus an expense markup of 10% of non-salary expenses and outside services to cover overhead, administration, other indirect costs.

Charges for Services provided by CONSULTANT's approved water quality laboratory will be in accordance with the published laboratory fee schedule in effect at the time the services are furnished.

Estimated expenditures by major task by year are given in the following table. These are estimates only and not contractual limits. The only contractual limit is the not-to-exceed fee given in Paragraph IV of the Agreement.

<b>Year</b>	<b>Task</b>	<b>Estimated Fee</b>
	<b>Mitigation Monitoring</b>	
2011	Site Visits	\$5,000
2011	Annual Monitoring and Report	\$23,000
2011	Address Special Issues	\$10,000
2012	Site Visits	\$3,000
2012	Annual Monitoring and Report	\$23,000
2012	Address Special Issues	\$10,000
2013	Site Visits	0
2013	Annual Monitoring and Report	\$23,000
2014	Site Visits	0
2014	Annual Monitoring and Report	\$23,000
	<b>On-call Services</b>	
2011		\$25,000
2012		\$25,000
2013		\$25,000
2014		\$25,000

## 2 INVOICING AND PAYMENT

2.1 ENGINEER shall submit its standard monthly invoice describing the Services performed and expenses incurred during the preceding month. CITY shall make payment of all undisputed portions of such invoice and provide written justification for the withholding of any disputed portions to ENGINEER within 30 calendar days after receipt of ENGINEER's monthly invoice.

2.2 Payment of all Compensation due ENGINEER pursuant to this Agreement shall be a condition precedent to CITY's use or reliance upon any of ENGINEER's professional services or work products furnished under this Agreement.

2.3 In the event payment for the Services has not been made within 60 calendar days from the date of the invoice, ENGINEER may, after giving 7 calendar days written notice and without penalty or liability of any nature, and without waiving any claim against CITY, suspend all or any part of the Services. CITY shall pay all undisputed portions of an invoice within thirty days of receipt. In order to defray carrying charges resulting from delayed payments, simple interest at the rate of 1.5% per month (18% per annum), not to exceed the maximum rate allowed by law, shall be added to the unpaid balance of each invoice. The interest period shall commence 30 calendar days after the date of the invoice. Payments shall first be credited to interest and then to principal.

2.4 Electronic payment may be made to the following address:

Bank name	Wells Fargo
Bank address	1000 Lakes Drive, Suite 250 West Covina, CA 91790
Bank contact	Priscilla Frazier 626/919-6602
Beneficiary	MWH Americas, Inc.
Beneficiary a/c	4945081503
ABA routing	121000248

## **Exhibit B**

### **Scope of Work for Waterman Treatment Plant Mitigation Planting Monitoring and Ongoing Plant Optimization**

#### **CONSULTANT RESPONSIBILITIES**

##### **1. Mitigation Planting Monitoring**

MWH will provide continued restoration and mitigation monitoring services as described in the *City of Fairfield Waterman WTP Expansion and Modernization Project Mitigation and Monitoring Plan* ("Monitoring Plan"), January 2007, prepared by ESA for the City of Fairfield ("City"). Mitigation and monitoring work was initiated in October 2009. This scope of work identifies remaining monitoring tasks to be completed through December 2014.

##### **Success Criteria and Monitoring**

MWH will assist the City in complying with the requirements outlined in the Monitoring Plan during the remaining four years of annual monitoring. Annual monitoring will include yearly plant monitoring site visits to collect vegetation data along previously established transects using the line-intercept method. Vegetation data will determine the percent cover of native and/or wetland species, and will be used to assess success in meeting performance criteria outlined in the Monitoring Plan. Photo monitoring will be conducted during annual monitoring visits, and general site information will be recorded, including survivorship, health, and vigor, of planted trees and shrubs.

In addition to the annual plant monitoring site visits, 2 additional site visits will be made in 2011, and 3 additional site visits will be made in 2012, as outlined in the Monitoring Plan to evaluate plant growth, ensure appropriate functioning of the irrigation system, and inspect for significant erosion or instability. The results of data collection and site observations will be summarized in annual reports to be completed by December 31 of each year of monitoring. Annual reports will also include a summary of information contained in previous reports, a discussion of comparisons between years, and vegetation trends. Annual reports will include photographs, maps, and data sheets from the current year. MWH will coordinate and submit annual monitoring reports to the City and permitting agencies.

If significant remedial actions are required due to failure to attain performance criteria, additional hours beyond those in the current budget may be required for coordination and additional agency-required monitoring visits.

##### **2. Ongoing Plant Optimization and On-Call Services**

MWH will provide services to assist with optimization of plant operation and other services as requested by the Waterman Plant Manager or the Assistant Director of Public Works up to the not-to-exceed fee limit.

## **CITY RESPONSIBILITIES**

- CITY shall furnish to ENGINEER the applicable information, designs and technical data in CITY's possession or control reasonably required for the proper performance of the Services. ENGINEER shall be entitled to reasonably rely upon the information and data provided by CITY or obtained from generally accepted sources within the industry without independent verification except and to the extent ENGINEER knows or in the exercise of reasonable care should know the document or information is inaccurate or incomplete.
- CITY shall arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to properly perform the Services.